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MAY 18 2005

**OFFICE OF PETITIONS**

In re Application of  
Jessie B. Linyear et al  
Application No. 09/918,071  
Filed: July 30, 2001  
Attorney Docket No. LIN-001

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed April 8, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." Petitioner is advised that this is **not** a final agency action decision.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed February 25, 2003, which set a shortened statutory period for reply of three (3) months. A reply under 37 CFR 1.113 is limited to an amendment that *prima facie* places the application in condition for allowance or a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)). The amendment submitted on July 1, 2003, did not *prima facie* place the application in condition for allowance as noted in the Advisory Action mailed July 29, 2003 and remailed on December 2, 2003. Therefore, as no Notice of Appeal (and appeal fee), Request for Continued Examination (RCE) or a continuing application was timely filed. Extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on August 26, 2003.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). This petition lacks item (1) above.

As to item (1), petitioner has not submitted an amendment that *prima facie* places the application in condition for allowance. The required reply to the final Office action must be an amendment that *prima facie* places the application in condition for allowance, a Notice of Appeal and the requisite fee, or a request for continued examination (RCE). A courtesy copy of the Advisory Action is enclosed.

Further correspondence with respect to this matter should be addressed as follows:

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By fax:                  (703) 872-9306  
                              ATTN: Office of Petitions

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (571) 272-3220.

  
Wan Laymon

Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

Attachment: Courtesy copy of the Advisory Action

cc:     DAVID J. BOLDUC  
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          VIRGINIA BEACH, VA 23455